STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO	)	
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS	)	Docket No. 07-0539
ILLINOIS POWER COMPANY d/b/a AmerenIP	)	
Approval of the Energy Efficiency and Demand-Response Plan	)	

BRIEF OF THE ILLINOIS

<u>DEPARTMENT OF COMMERCE AND ECONONIC OPPORTUNITY</u>

Contents

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I. INTRODUCTION AND SUMMARY

In accordance with recently passed legislation, P.A. 95-0481, the Illinois Department of Commerce and Economic Opportunity ("the Department" or "DCEO"), Commonwealth Edison Company ("ComEd") and Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP (collectively "Ameren") were required to submit an Energy Efficiency Portfolio to the Illinois Commerce Commission ("Commission") in the manner prescribed by new Section 12-103 of the Public Utilities Act ("PUA"). 220 ILCS 5/12-103. Specifically, 12-103(e) requires that the details of measures implemented by the Department shall be submitted by the Department to the Commission in connection with the utility's filing regarding the energy efficiency and demand response measures that the utility implements. 220 ILCS 13-103(e). Section 12-103(f) requires that, by no later than November 15, 2007, each electric utility shall file an Energy Efficiency and Demand-Response Portfolio with the Commission, to meet the energy efficiency and demand-response standards for 2008 through 2010. Accordingly, on November 15, 2007, the Department, ComEd and Ameren each submitted their respective portions of the overall Energy Efficiency Portfolio.

Public forums were held at the following locations, dates and times: Illinois Commerce Commission, 527 E. Capitol Ave., Springfield, Illinois on November 27, 2007, at the hour of 7:00 P.M.; City of Rockford Council Chambers, 425 E. State St., 2nd Floor, Rockford, Illinois on November 29, 2007, at the hour of 7:00 P.M.; Illinois Commerce Commission, Michael A. Bilandic Building, 160 North LaSalle, Suite C-800, Chicago, Illinois on December 4, 2007, at the hour of 6:30 P.M. The forums were for the purpose of receiving public comment concerning the energy efficiency and demand response plans proposed by Commonwealth Edison Company, Ameren and the Illinois Department of Commerce and Economic Opportunity.

In response to the Department's petition, the following parties filed motions to intervene, which were granted: the Office of the Attorney General; Illinois Commerce Commission Staff; the Citizens Utility Board; Commonwealth Edison Co.; Constellation Energy Group, Inc.; Midwest/MISO; the Environmental Law and Policy Center; Ameren Services Company; the City of Chicago; MidAmerican Energy Company; Integrys Energy Services, Inc.; ConsumerPowerline; BlueStar Energy Services, Inc.; Environment Illinois Research and Education Center; Coalition of Energy Suppliers; DLA Piper US LLP; the National Resources Defense Council.

On behalf of DCEO, the following witness submitted testimony: Jonathan Feipel, Manager of the Energy Division for the Bureau of Energy and Recycling (DCEO Exhibit 1.0 with attachments 1.2 through 1.15, and DCEO Exhibit 2.0). Other witnesses filing testimony in this proceeding are as follows: William F. Abolt on behalf of the City of Chicago, Henry Henderson on behalf of the National Resources Defense Council, Philip H. Mosenthal on behalf of the Office of the Illinois Attorney General, and Richard J. Zuraski on behalf of the Illinois Commerce Commission Staff. The City of Chicago also filed Comments on November 30, 2007 and Corrected Comments on December 4, 2007. Hearings were held on January 4, 2008.

On January 10, 2008, the Administrative Law Judge issued a Ruling granting the Illinois Commerce Commission Staff's oral motion to sever Docket No. 07-0541 (the "DCEO docket"). In her Ruling, the Administrative Law Judge noted that the Department is a petitioner, as of right, in Dockets No. 07-0539 (the "Ameren docket") and No. 07-0540 (the "ComEd docket"). Therefore, this Brief is being filed in both the Ameren and ComEd dockets.

In this case, the Department seeks approval of its portion of the Energy Efficiency Portfolio and Plan. The Department's programs identify cost-effective energy efficiency measures which, together with those measures administered by the electric utilities, are designed to meet the incremental annual energy savings goals set forth in Section 12-103(b) of the PUA.

II. STATUTORY REQUIREMENTS OF THE PORTFOLIO

Section 12-103 of the PUA requires that the Portfolio meet certain requirements. The DCEO portion of the Portfolio satisfies the above-mentioned statutory requirements as follows:

A. Cost Effective.

The overall Portfolio of energy efficiency programs must be "cost effective" as defined by the Act. Section 12-103(a) states that "As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test. The low-income measures described in subsection (f)(4) of this Section shall not be required to meet the total resource cost test." Thus the combined portfolio of utility and DCEO programs (minus the low-income programs) has to meet the Total Resource Cost Test.

ICF International, Inc. performed the total resources cost test on the combined portfolio of the utility plus DCEO portfolio of programs and the portfolio passes the test.[1] The DCEO low-income programs do not have to be included in this test as later

[1] Ameren Exhibit 4.0, page 29 and ComEd Exhibit 6.0, pages 31-32.

described. Notwithstanding, DCEO endeavored to make its programs pass the Total Resources Cost Test as an indication of their cost effectiveness; this in no way should imply that DCEO believes that individual measures or programs are required to pass the TRC.[2]

B. Reduction Targets.

The overall Portfolio of energy efficiency programs must be designed to meet specific electricity usage reduction targets as denoted by the statute. These goals are to be met by ComEd and Ameren in their respective territories in conjunction with DCEO. Section 12-103(e) states that "The portfolio of measures, administered by both the utilities and the Department, shall, in combination, be designed to achieve the annual savings targets described in subsections (b) and (c) of this Section, as modified by subsection (d) of this Section." (220 ILCS 5/12-103(e)) The utilities and DCEO are to coordinate their efforts and develop efficiency programs and three year plans in order to meet incremental, annual energy savings goals. Section 12-103(b) includes the incremental, annual goals that the combined portfolio must meet. The reduction targets for the first three years are: (1) 0.2% of energy delivered in the year commencing June 1, 2008; (2) 0.4% of energy delivered in the year commencing June 1, 2009; (3) 0.6% of energy delivered in the year commencing June 1, 2010." The annual reductions escalate to 2% of energy delivered in 2015 and continue at 2% each year thereafter. (220 ILCS 5/12-103(b))

After substantial coordination with the utilities, DCEO, ComEd and Ameren agreed that DCEO's efficiency programs will cover 3 major areas: the public sector, the low-income sector and "market transformation" (training, education, etc.) programs. To that end, EEPS funding was divided based on the 75/25% split of program costs and the utilities and DCEO further agreed that the DCEO share of the annual kWh savings targets would be less than 25% with the relevant utility making up the difference. DCEO's programs will account for around 20% (ranging from 18.6%- 21.5%) of the total kWh

[2] DCEO Exhibit 2.0, page 7.

savings during the first three planning years.[3] This kWh savings split is necessary in order to allow DCEO to fund less cost effective (such as low-income) or difficult to measure, but necessary, programs. DCEO's contribution plus the utility kWh savings projections meet or exceed the statutory requirements as presented in the ComEd, Ameren and DCEO testimonies. Further, DCEO's portion of the portfolio is designed to support the ongoing nature of the escalating reduction targets (2% reductions by 2015 and continuing thereafter) by incorporating incentive programs with longer term impacts and market transformation programs—each of which are designed to develop a robust energy efficiency services industry necessary to meet the future statutory requirements.[4]

C. Demand Response.

Section 12-103(c) requires that "the Electric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act." (220 ILCS 5/12-103(c))

Pursuant to "Electric utilities shall implement 100% of the demand-response measures in the plans" (220 ILCS 5/12-103(e)), DCEO does not plan to include demand-response specific measures in its portion of the portfolio. DCEO understands that the utilities have included Demand Response measures in their portions of the portfolio, thereby meeting this requirement.

D. Cost Cap.

The Portfolio is to meet the above referenced electricity reduction targets within an escalating cost cap. Section 12-103(d) includes a formula for calculating the maximum average impact on customers, which for the first three years is limited to "(1) in 2008, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; (2) in 2009, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or

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[3] DCEO Exhibit 1.1.

[4] DCEO Exhibit 1.0, page 21

1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; (3) in 2010, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007." (220 ILCS 5/12-103(d))

DCEO understands that the utilities have properly calculated the cost caps and that the DCEO plus utility portfolio does not exceed the cost cap.

E. Portfolio Split.

Section 12-103 contains guidance as to how the utilities and DCEO will divide the energy efficiency portfolio. The DCEO plus utility portfolio meets the Section 12-103(e) requirements with respect to the split of the portfolio:

1. Demand Response.

"Electric utilities shall implement 100% of the demand-response measures in the plans." (220 ILCS 5/12-103(e)) As noted above, DCEO does not plan to include demand-response specific measures in its portion of the portion portfolio pursuant to Section 12-103(e).

2. DCEO and Utility Share.

"Electric utilities shall implement 75% of the energy efficiency measures approved by the Commission." (220 ILCS 5/12-103(e)) "The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the Department of Commerce and Economic Opportunity" (220 ILCS 5/12-103(e)) DCEO will administer 25% of the energy efficiency funding and ComEd and Ameren will administer the other 75% in order to cover the respective costs of each efficiency administrator pursuant to Section 220 ILCS 5/12-103(e).[5]

[5] DCEO Exhibit 1.0, page 12.

3. Public Sector Allocation.

"A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures." (220 ILCS 5/12-103(e))

DCEO's portion of the portfolio includes approximately 65% of its program funding and measures for the "public sector" which includes units of local government, municipal corporations, school districts, and community college districts. The statute requires that 10% of the total portfolio (40% of DCEO's portion) be procured from these specific groups. DCEO has included approximately 25% more funding than required in this area in order to more fully serve these public groups as well as to offer these programs to universities and state facilities. DCEO will thus meet or exceed the Section 12-103(e) requirement. This was done because universities and other state facilities make their purchasing decisions in a similar fashion to municipals, schools and community colleges and to avoid potential confusion if these groups were barred from DCEO's incentive programs targeted at municipals, schools and public community colleges.[6]

F. Portfolio Characteristics.

Section 12-103(f) includes specific requirements for the Portfolio and plans. DCEO's portion of the portfolio meets the Section 12-103(f) requirements:

1. Reduction Goals within the Cost Cap.

"Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e)." (220 ILCS 5/12-103(f)(1)) The DCEO plus utility portfolio is planned and projected to meet the

[6] DCEO Exhibit 1.0, pages 17-19.

electricity reduction requirements of the statute within the cost cap. This is demonstrated in the petitioners' testimony in compliance with Section 12-103(f)(1).

2. Codes.

"Present specific proposals to implement new building and appliance standards that have been placed into effect." (220 ILCS 5/12-103(f)(2)) DCEO's Training Program will train industry personnel related to any new energy efficiency codes, for both buildings and appliances, as needed and as funds are available. The Capital Development Board regularly updates the Illinois Energy Conservation Code for Commercial Buildings. As a result, there is a need to provide training for commercial building professionals and the local officials that enforce the codes in order to educate them on the latest energy code updates.[7] Because the statute refers to the support of "appliance standards that have been placed into effect" and because no such standards have yet been placed into effect in Illinois that require training, DCEO did not explicitly include appliance training programs in its initial plan. The Federal Government sets efficiency standards for appliances as a set of specifications needed to meet the Energy Star rating, for example. However these either do not require training at this time or are covered by other funding sources. However, if new appliance standards were adopted in Illinois (at the state or local level) that required training, DCEO would include training related activities as part of its Training Program. Moreover, in all cases where DCEO's efficiency programs include appliances, DCEO supports only the inclusion of high performance (Energy Star, etc.) models.[8] DCEO's portion of the portfolio meets this requirement of Section 12-103(f)(2).

3. Revenue Estimates.

"Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures

[7] DCEO Exhibit 1.0, page 51-54.
[8] DCEO Exhibit 2.0, page 17.

designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e)." (220 ILCS 5/12-103(f)(3)) DCEO understands that the utilities provided "estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures" in compliance with Section 12-103(f)(3).

4. Low-Income: Coordination and Share.

"Coordinate with the Department and the Department of Healthcare and Family Services to present a portfolio of energy efficiency measures targeted to households at or below 150% of the poverty level at a level proportionate to those households' share of total annual utility revenues in Illinois." (220 ILCS 5/12-103(f)(4)) DCEO, ComEd and Ameren worked together closely on the development of the total portfolio and on the development of a suite of low-income programs Pursuant to Section 12-130(f)(4). Once the decision was made that DCEO would manage the low-income programs, DCEO met consulted with DHFS along with other low-income serving organizations such as the Illinois Housing Development Authority, the Center for Neighborhood Technology, etc., as well as the utilities, regarding the design of the low-income programs.[9]

With respect to the low-income sector pro-rata carve out, in early discussions with the utilities and DHFS it became apparent that DCEO is in a stronger position to manage the low-income programs. A number of other State Agencies (DHFS, IHDA, etc.) also support low-income consumers and DCEO's relationships with these "sister agencies" will facilitate providing services to this sector.[10] Furthermore, DCEO has long operated a very successful affordable housing efficiency improvement program and it was natural for DCEO to build off of this program for our contribution to the overall portfolio.[11]

[9] DCEO Exhibit 2.0, page 16.
[10] DCEO Exhibit 1.0, pages 20 and 23.
[11] DCEO Exhibit 1.0, page 19.

DCEO calculated this percentage with the assistance of DHFS and the utilities. DHFS operates the Low Income Heating Assistance Program, which is targeted specifically at providing weatherization programs to households at or below 150% of the poverty level, and maintains solid information with respect to this sector. Based on information provided by DHFS and the utilities, DCEO estimates that the low income households' share is 5.94% and proposes using 6% as the basis for its funding of low-income programs for the first three year planning period.[12] Consequently DCEO's budget includes $3.2 million for its suite of low-income programs which meets the 6% low-income pro-rata share.[13]

5. Cost Effective and Diverse.

"Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs." (220 ILCS 5/12-103(f)(5)) As noted earlier, ICF International demonstrated that the DCEO plus utility portfolio passes the Total Resource Cost Test. Furthermore, the programs that make up the portfolio encompass all rate classes (industrial, commercial, residential) and provide further targeted programs designed to meet the needs of particular sectors (public, low-income, etc.) through both incentive and market transformation programs.[14] In this way, the Section 12-103(f)(5) criteria are met.

6. Tariff.

"Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs." (220 ILCS 5/12-103(f)(6)) DCEO understands that ComEd and Ameren included

[12] DCEO Exhibit 1.0, pages 28-31.
[13] DCEO Exhibit 1.1.
[14] DCEO Exhibit 2.0, pages 8-9.

a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs pursuant to Section 12-103(f)(6).

7. Independent Evaluation.

"Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year." (220 ILCS 5/12-103(f)(7)) In order to provide for an annual independent evaluation of the portfolio, DCEO requests the formation of an advisory group that would oversee the independent evaluation.[15] 3% of the total funding will be set aside for hiring an evaluator and the advisory group would facilitate the transmission of data and the decision-making processes. Furthermore, as noted below, DCEO requests that the advisory group and evaluator "conduct a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations." (220 ILCS 5/12-103(f)(7))

G. Next Generation Technologies.

Section 12-103(g) states that "No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices." (220 ILCS 5/12-103(g)) DCEO does not plan to rely heavily on demonstration of breakthrough equipment and devices in its portion of the portfolio. As they arise during program implementation they may be considered. However, DCEO will be mindful of the 3% cap on these types of items pursuant to Section 12-103(g)

[15] DCEO Exhibit 1.0, pages 55-57.

H. Penalties.

Section 12-103(j) includes the penalty provision related to DCEO. It states that "If, after 3 years, or any subsequent 3-year period, the Department fails to implement the Department's share of energy efficiency measures required by the standards in subsection (b), then the Illinois Power Agency may assume responsibility for and control of the Department's share of the required energy efficiency measures." (220 ILCS 5/12-103(j)) DCEO takes the Section 12-103(j) penalty very seriously. DCEO fully supports the need for the best estimates available for kWh savings values, net to gross ratios and realization rates that will be produced by the independent evaluation. Any modifications to these values resulting from the evaluation process should be applied retrospectively for purposes of data analysis. However, DCEO strongly disagrees with the retroactive use of changes to these values and the resulting overall kWh savings as a basis for imposing the statutory penalties for missing the goals. DCEO has undertaken a good-faith effort to develop an efficiency plan and programs based on the best information currently available in order to achieve the energy usage reduction goals in conjunction with the appropriate utility. It is neither just nor reasonable to use a retroactive modification of key planning data as the basis for the imposition of a penalty.[16]

III. IMPLEMENTATION ISSUES

Two broad categories of issues have been raised related to implementation of the portfolio and programs that the statute does not provide explicit direction. These two areas are: 1) those related to the overall functionality of the efficiency plan and 2) issues specific to individual programs.

A. Plan flexibility.

DCEO requests that it be allowed to reserve the right to revise any and all aspects of its programs at any time during the planning period. As a result, DCEO divided its

[16] DCEO Exhibit 2.0, page 13.

programs among similar sectors in order to facilitate shifting funding between programs within a particular sector. Programs, incentives, budget allocations, and other aspects of the plan will likely need to be revised at various times during the three year plan as a result of the Advisory Group recommendations and/or the Measurement and Evaluation process.[17] On this point, there is wide consensus. Office of the Attorney General witness Mr. Mosenthal states that:

> "I believe that flexibility is important. The PAs, with Collaborative agreement, need to be able to modify programs over time based on market conditions and feedback on the effectiveness of their implementation efforts. Ultimately, the ICC s role should be in verifying and ensuring that the goals of the legislation are met, including the net savings achieved and the rate impact caps."[18]

ICC Staff states:

> "I can appreciate how granting the requested flexibility would aid the Company in cost-effectively achieving the level of energy savings that it projects to be able to save."

Several statutory carve outs are included to ensure that certain groups receive support such as municipals, schools, and community colleges[19], low-income consumers[20], and new building and appliance standards.[21] However, apart from these requirements, the sole objective of the statute is for the joint DCEO/utility portfolio to meet the annual energy usage reduction targets listed in Section 12-103(c) within the cost cap included in Section 12-103(d). Consequently, DCEO and the utilities will need the flexibility to adjust its programs as needed in accordance with market conditions, technology development, EM&V results and other experience in order to ensure that the reduction goals are met within the cost cap.

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[17] DCEO Exhibit 1.0, pages 21-24 and DCEO Exhibit 2.0 page 8.
[18] AG Exhibit 1.0, page 8.
[19] 220 ILCS 5/12-103(e)
[20] 220 ILCS 5/12-103(f)(4)
[21] 220 ILCS 5/12-103(f)(2)

In City of Chicago v. Illinois Commerce Comm'n, 233 Ill. App. 3d 992 (1st Dist. 1992), the Illinois Appellate Court affirmed the Commission's approval of an energy plan submitted by ComEd under a prior provision of the PUA, even while recognizing that the planning process was involved was "future-oriented." Id. at 1003. In that case, ComEd had been required under the PUA to submit a "Least-Cost Plan" which the parties described as a "long-range integrated resource planning process resulting in the selection of future resources and an implementation for acquiring those resources." Id. at 997. The Court recognized that any requirement that ComEd's plan provide least-cost service *immediately* would be impossible to satisfy because such planning is "necessarily a forward-looking activity, and all resources, both demand-side and supply-side, require many years to develop." Id. at 1003. Similarly, in this case, the Commission should recognize that DCEO's Portfolio is based on many factors that are constantly in flux, and should therefore allow DCEO the flexibility to adjust its portfolio as necessary in order to meet the larger requirements of the PUA.

It should also be noted that DCEO proposed and supports a Commission ordered Advisory Group process in order to ensure that program flexibility does not diminish the statutory requirement that the DCEO/utility portfolio shall **offer a diverse cross-section of programs**.[22] The Commission can still make such a finding in this proceeding and be assured that the Advisory Group process coupled with external pressures and the Commission's role of verifying statutory compliance will be sufficient to ensure that the combined utility and DCEO portfolio will always include a diverse cross-section of programs. Furthermore, note that due to the statutory requirements, diversity will be achieved with respect to the carve-outs for the public and low-income markets coupled with the remaining, private sector programs.[23]

Therefore, DCEO requests and should be granted the flexibility to shift funding between programs and to modify programs during this 3 year plan as needed to meet the specific demands of the market as they arise.

[22] 220 ILCS 5/12-103(f)(5)
[23] DCEO Exhibit 2.0 pages 8-9.

B. The Advisory Group.

Witnesses for the Attorney General, the City of Chicago and the National Resources Defense Council all support the use of an advisory group process to facilitate information sharing and decision making throughout the years of the plan.[24] A key to success of the efficiency programs will be the ability to rapidly respond to market conditions as they are happening – not after the fact during an annual or triennial review.[25] To that end, the structure of the statewide Advisory Group presented by the National Resources Defense Council[26] provides an excellent set of guidelines for the Commission to follow and DCEO supports this approach with either fewer members or an active committee structure within the advisory group to facilitate the working process. This will both keep the conversations manageable, and allow for different treatment of certain efficiency program considerations that are utility-territory specific. The key functions and features (resolution of disagreements, frequency of meetings, and subjects of discussion) of the Advisory Group presented by the Office of the Attorney General are also in line with DCEO's position.

Several interveners commented on the need for ComEd, Ameren, and DCEO to coordinate their program offerings and to offer consistent programs statewide. They specifically argue that consistency helps to minimize program costs and avoid confusion and that the collaborative be used to work out program details.

According to the Office of the Attorney General:

> "PAs [program administrators] should work to resolve any program differences and offer consistent statewide programs. Markets do not neatly separate by utility territory. As a result, offering different incentive levels for the same products, having different rules about minimum qualifying efficiency or installation

[24] DCEO Exhibit 2.0 page 10.
[25] DCEO Exhibit 1.0 page 56.
[26] National Resources Defense Council Exhibit 1.0, Attachment A.

practices, etc. will create confusion in the market for trade allies, vendors, design professionals and customers with facilities in more than one utility territory." [27]

The Natural Resources Defense Council states:

- "Many elements of the demand-side portfolio can be addressed consistently in Illinois. Consistency serves to minimize costs and customer confusion, ease administrative burden on the Commission and other stakeholders, and produces energy savings that are easier to document."[28]

Several interveners also supported using the collaborative advisory process to work out program details. The Office of the Attorney General argues: "I believe it is appropriate for the ICC to allow program design issues to be worked out through a collaborative process that commences when this docket closes."[29] The City of Chicago states: "I recommend that a collaborative process be established that would provide input into developing and implementing the demand-side management portfolio approved in this case."[30] And the Natural Resources Defense Council: "I recommend that the Commission authorize a Demand-Side Stakeholder Advisory Process for all three portfolio administrators (ComEd, DCEO and Ameren)....A separate process for each administrator will not lead to statewide consistency and will be much more expensive for stakeholders to participate in."[31]

Therefore, the Commission should order the creation and functionality of a statewide Advisory Group to facilitate the evaluation, measurement and verification process. The intent behind establishment of an Advisory Group of interested parties is to provide an open forum for sharing information that allows changes to be made rapidly to the efficiency programs in order to respond to market conditions in a way that avoids lengthy, contested proceedings. Ordering its inception will ensure that consistent and non-discriminatory programs are implemented across Illinois, promote an atmosphere of

[27] AG Exhibit 1.0, page 14.
[28] National Resources Defense Council Exhibit 1.0, page 6.
[29] AG Exhibit 1.0, page 5.
[30] City Exhibit 1.0, page 5.
[31] National Resources Defense Council Exhibit 1.0, page 5.

cooperation and provide legitimacy and a clear mandate to the Group in order to accomplish these goals.

Even though the PUA does not grant the Commission the express authority to form such an Advisory Group, it is well established that that the express grant of authority to an administrative agency also includes the authority to do what is reasonably necessary to accomplish the legislature's objective. See Abbott Labs., Inc. v. Illinois Commerce Comm'n, 289 Ill. App. 3d 705, 712 (1st Dist. 1997) (listing cases). Thus, it is within the Commission's broad authority to form an Advisory Group -- as suggested by numerous parties in this case -- as further means to accomplish the larger goals of the PUA.

Further, the Commission should establish a set of goals for the Advisory Group, including but not limited to: ensuring that the statutory energy usage reduction targets are met, reaching unanimous decisions, sharing information from the evaluator as openly as possible, using a statewide approach as much as possible and achieving uniform incentives for similar programs to the extent practicable given any potential limitations (such as compromising the short or long term goals of the law).

C. Treatment of kWh savings.

DCEO's energy efficiency programs and implementation plan are currently based on kWh savings values related to individual efficiency measures, net-to-gross ratios, and realization rates based on nationwide efficiency data supplied to DCEO and the utilities by ICF International, Inc. DCEO requests that these kWh savings, net-to-gross, and realization rate values be approved by the Commission, on an interim basis, for use in the first three year planning period. These specific values (efficiency measure related kWh savings, net-to-gross ratio and realization rate values that form the kWh savings estimates associated with each DCEO program) will apply ***as the intermediate method*** of evaluating programmatic success ***until*** the Advisory Group and independent evaluator are able to provide revisions. DCEO agrees that better data will be produced through the Advisory Group and independent evaluation regarding specific kWh savings figures, net to gross ratios and realization rates for many of the efficiency measures and programs included in the overall portfolio.[32]

Given the resources available to the evaluator pursuant to the statute, this will be a slowly evolving process and the values for which DCEO seeks approval will likely be in use for some time. However, if the independent evaluator and the Advisory Group process result in changes to these values, then DCEO plans to update them accordingly. Nonetheless, DCEO has sufficient confidence in the subset of lighting measures presented by ICF, International that if the Commission were to order that any kWh savings values be treated as "deemed savings", then these figures could reasonably be "deemed", thereby assigning savings values to these particular measures rather than determining them through evaluation. Once approved, these values, in all likelihood, would not change, nor would the evaluators review them (at least initially) as they would be set until such time as the Commission might reevaluate its order.

Thus the Commission should order that the values associated with the specific subset of lighting measures included in ICF International witness Val Jensen's testimony be treated as "deemed savings" values.[33] The other efficiency measure kWh savings, net-to-gross ratio and realization rate values that form the kWh savings estimates associated with each DCEO program should be approved as the intermediate method of evaluating programmatic success until the Advisory Group and independent evaluator are able to provide revisions.

The kWh savings from individual projects implemented pursuant to DCEO's efficiency programs should be annualized, such that no matter when a project is completed over the course of the year the annual kWh savings of all measures completed will be counted toward that same year. This approach recognizes that efficiency improvements will be made throughout each of the planning years. Furthermore, because the budget for the efficiency programs is collected on a monthly basis, it would be

[32] DCEO Exhibit 2.0 pages 11-13.
[33] DCEO Exhibit 2.0 pages 12.

impossible to meet the statutory goals without annualizing kWh savings as all of the funds will not be available at the start of the year.[34]

The structure of the statute tends to drive efficiency programs toward low-cost, short-term measures. If the annualization of kWh savings is not allowed, this will ensure that only these types of measures are implemented and will mean that in a number of years, the statutory reduction goals will be unattainable. For this reason, because efficiency improvements will be made throughout each of the planning years, and because the budget for the efficiency programs is collected on a monthly basis, annualized savings are the best choice from both policy and practical perspectives.[35]

Therefore, the annualization of kWh savings from individual projects should be approved.

IV. CONCLUSION

In this matter, the Illinois Department of Commerce and Economic Opportunity respectfully requests that the Commission approve its portion of the Energy Efficiency Portfolio Standard, plan and energy efficiency programs for use in the first three year implementation period. The Department further requests that the Commission:

> Approve the DCEO programs and plans as part of the larger portfolio goal shared by DCEO and the appropriate utility for each service territory. In this way, the total kWh reduction targets presented in the statute represent a common goal to be achieved by the combined savings from the DCEO and relevant utility programs.
>
> Approve DCEO's plans for implementing its programs as proposed.
>
> Order the application of the Total Resources Cost Test to the entire portfolio and not to individual programs or measures.

[34] DCEO Exhibit 1.0 page 55.
[35] DCEO Exhibit 2.0 page 9.

Grant DCEO the flexibility to shift funding between programs and to modify programs during this 3 year plan as needed to meet the specific demands of the market as they arise.

Order the specific subset of kWh savings values for specific lighting measures to be considered as "deemed savings" values.

Approve the other efficiency measure kWh savings, net-to-gross ratio and realization rate values that form the kWh savings estimates associated with each DCEO program as the intermediate method of evaluating programmatic success until the Advisory Group and independent evaluator are able to provide revisions.

Order the use of modifications of these values to be used retroactively in all instances except the imposition of the statutory penalties.

Approve the annualization of kWh savings from individual projects.

Approve the Advisory Group as presented in DCEO's initial filing with the additional clarifications provided by the National Resources Defense Council and the Office of the Attorney General (with minor modifications).

Respectfully Submitted,

LISA MADIGAN
Attorney General of Illinois

/s/Allan V. Abinoja
GARY M. GRIFFIN
ALLAN V. ABINOJA
Assistant Attorneys General
General Law Bureau
100 W. Randolph St., 13th Fl.
Chicago, Illinois 60601
Tel: (312) 814-3650/5312
Fax: (312) 814-4425